



Maine Human Rights Commission

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Via Electronic Mail

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04112-0368

RE: Proposed Amendments of Maine Rules of Professional Conduct and Maine Bar Rules

To the Honorable Justices of the Maine Supreme Judicial Court:

As the State of Maine agency charged with enforcing the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA"), the Maine Human Rights Commission ("Commission") has the responsibility of making recommendations for further legislation or executive action concerning infringements on human rights or personal dignity in Maine, includes commenting on proposals relating to the content of the MHRA. 5 M.R.S. § 4566(7), (11). To that end, the Commission writes to strongly support the Court's May 22, 2018 proposal to amend Rule 8.4(g) of the Maine Rules of Professional Conduct and Rule 5 of the Maine Bar Rules to specifically address unlawful harassment or discrimination.

In Fall 2017, the Court issued an initial proposal to amend M.R. Prof. Conduct 8.4(g) to include in the definition of attorney misconduct "engag[ing] in unlawful harassment or unlawful discrimination." The Commission supported this amendment in a December 2018 comment, as did many others who submitted comments to the Court. A number of other commenters objected to what they saw as the vague and undefined nature of the proposal, and the fact that it could apply even if the unlawful harassment or discrimination arose outside of the practice of law.

Both in the Commission's initial comment and now, the Commission suggests that the Court allow latitude in the interpretation of unlawful conduct covered by the MHRA that could be considered "misconduct" under M.R. Prof. Conduct 8.4(g). Maine attorneys may be subject to the MHRA for discrimination in several capacities other than as "public accommodations" that provide a service to the public, including as employers and housing providers. See 5 M.R.S. §4552. The Court's proposed Advisory Committee Note related to M.R. Prof. Conduct 8.4(g) indicates that the Court would include attorney conduct "related to the practice of law" to include that which is directed toward one's coworkers, and the Commission agrees with this approach.

The Commission encourages the Court also to consider the possibility that conduct by an attorney outside of employment or service to a client could implicate attorney misconduct. For example, what if an attorney

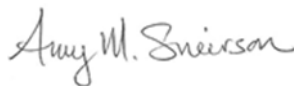
subjected their tenant to unlawful MHRA discrimination and retaliated against the tenant for asserting the right to be free of MHRA discrimination? Is this less relevant to the attorney's professionalism because it is a residential rather than a corporate tenancy? Additionally, the MHRA contains a clear prohibition that an individual may not interfere with another person's right to be free from discrimination. 5 M.R.S. §4633(2). What if one attorney visiting a jail joined prisoners in harassing a nearby attorney based on their appearance? This would not be related to the attorney's practice of law, but could be considered an attempt to interfere with the nearby attorney's right to be free of sexual harassment while doing their job. Neither of these two scenarios is hypothetical. At courthouses, law firms, jails, offices, and every other setting where counsel appear in Maine, many female attorneys can recount having experienced good old-fashioned sexual harassment in the not-too-distant past. What if the last scenario was different, and a Caucasian attorney walking into a café told people speaking Spanish that they had to speak English or he would call federal immigration authorities? This would not be related to the attorney's practice of law, but could be considered an attempt to interfere with the Spanish-speaking patrons' right to be free of harassment based on national origin in a public accommodation. Just as the MHRA is broad in scope, so should the Court be able to consider a broad range of behavior by a Maine attorney "misconduct" if the behavior violates the MHRA.

Some who commented on the Court's initial M.R. Prof. Conduct 8.4(g) proposal suggested that the Court should limit the application of the Rules of Professional Conduct to only those actions an attorney might take related to representing clients, as one should be able to retain one's personal life as private. To do otherwise, some commenters noted, could lead to attorney discipline for expressing a religious, moral, free speech or political viewpoint that is outside the zone of what currently is politically acceptable. While presumably such objections may remain, the Commission believes that the Court has addressed them by outlining objective and clear standards for harassment and discrimination that would violate the MHRA within the revised M.R. Prof. Conduct 8.4(g) proposal.

Finally, the Commission heartily endorses the Court's proposal to require Maine attorneys to register for one additional hour of continuing legal education per year "primarily concerned with harassment and discriminatory conduct or communication related to the practice of law". Having such education annually should assist both the Court (in maintaining the integrity of the legal profession) and the Commission (in enforcing the MHRA).

If the Commission can assist the Court, or answer any questions about the above, please let me know. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Amy M. Sneirson".

Amy M. Sneirson